# Lalique N.A., Inc. *and* Amalgamated, Industrial and Toy & Novelty Workers of America, Local 223, AFL-CIO, Petitioner. Case 22–RC-12182

August 22, 2003

# DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held April 19, 2002, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 8 for and 4 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings<sup>2</sup> and recommendations, and finds that a certification of representative should be issued.

#### Introduction

The issue in this case is whether the Union made an objectionable promise of free medical benefits to employees if it won the election. The Employer contends that the Union promised free medical coverage as an automatic benefit of membership, rather than as a benefit that had to be negotiated with the Employer. The hearing officer recommended overruling the objection "based on a totality of the circumstances, i.e., Petitioner's campaign leaflets, along with what Petitioner communicated to employees at its meetings, and the credible testimony of employee witnesses, that employees were fully informed that free medical benefits [were] dependent on the parties' collective-bargaining negotiations." We agree.

## Facts

During the election campaign, the Union distributed 10 to 20 leaflets to employees. The Employer's objection is based on statements in two of the leaflets. One statement, in a leaflet distributed in late March or early April, is:

Remember when Local 223 is elected on April 19<sup>th</sup> you will no longer have to pay for you and your families medical benefits. As a Local 223 member you will be entitled to free medical care, free hospitals, free dental care, free optical care and eyeglasses not only for you

but for your immediate family members as well. And nothing will be taken out of your paycheck to pay for those benefits. [Emphasis added.]

The other statement, in a leaflet distributed on April 15 and signed by Rocco Miranti, the Union's manager, is:

I want to remind you that the Organizing Committee previously informed you that the initiation fee as well as dues, will only be collected when you have a signed contract and after you receive free medical benefits for you and you family [sic]. In addition, I have waived the waiting period for all current Lalique employees so that no one would have a lapse in their coverage. [Emphasis added.]

There are other references to medical benefits in campaign literature distributed by the parties. The first union leaflet mentioned above also stated

Since you the employees of Lalique is [sic] the union you will get to choose a committee of workers from your shop to sit with the Union and your boss to negotiate a legally binding contract which is acceptable to you the workers of Lalique and guarantees you job security, free medical benefit as well as dignity on the job you deserve.

#### A union leaflet on April 9, stated

The union informed everyone from day one that an election victory on April 19th is only the first positive step towards gaining better wages and benefits. But you are not going to pay a dime of dues or initiation until you have a signed legal and binding contract with free medical coverage for you and your family as well as other benefits that you deserve.

A leaflet, apparently distributed by the Employer sometime prior to April 10, contained the following quotation from a Board decision:

Employees understand that a union cannot obtain increased wages and benefits just by winning an election, but that benefits must be obtained through collective bargaining. [Burns Security Services, 256 NLRB 959 (1981).]

An April 10 union leaflet responded to the Employer's leaflet:

Recently, the company distributed flyers containing statements from National Labor Relations Board cases relating to the collective bargaining process. Those statements confirm what your local 223 representatives have already told you—we need your vote to fulfill our

<sup>&</sup>lt;sup>1</sup> All dates are in 2002, unless otherwise indicated.

<sup>&</sup>lt;sup>2</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

commitment to negotiate higher wages, medical and other benefits for you and your family.

Finally, in an undated leaflet that began with the phrase, "As election date draws near," the Union urged the employees to vote "YES" and stated:

A "YES" vote means that the Company will be required by law to negotiate in good faith with the Union for:

- Immediate and future wage increases;
- More holidays, improved vacation schedules and guaranteed sick days;
- Free medical insurance, including a dental program, eyeglass program, free prescription program and free life insurance.

. . . .

Local 223 will not take a single cent from its future Union members if it cannot secure for them a legally binding contract providing them with a free medical plan and guarantee you the benefits you deserve.

In addition to distributing leaflets, union representatives conducted four or five meetings with employees during the campaign. Out of 12 unit employees, an average of 8 to 10 employees attended the meetings, according to Business Agent Anthony Miranti's uncontroverted testimony. Miranti testified that he explained to employees in these meetings that, if the Union won the election, it would attempt to obtain free medical benefits through contract negotiations with the Employer. Miranti's testimony was corroborated by employees Hernandez and Tolbert, who testified Miranti explained to employees at the meetings that the free medical benefits referred to in the Union's leaflets would not be granted automatically if the Union won the election but would have to be achieved through contract negotiations.

Nancy Michael, the Employer's human resources manager, testified that Hernandez, Tolbert, and fellow employee Philip told her the Union was offering "free medical," and none of the employees stated these benefits could be achieved only if agreed to during contract negotiations. Michael told these employees she could not understand how the Union could obtain free medical benefits for the employees, but she did not explain that such benefits would have to be secured through negotiations with the Employer.

### Analysis

It is well established that "the burden of proof on parties seeking to have a Board-supervised election set aside

is a heavy one."3 Furthermore, as recognized by the Employer in quoting the Board case cited in its campaign literature, employees are generally able to understand that a union cannot obtain most benefits automatically by winning an election but must seek to achieve them through collective bargaining,4 although there are some benefits within a union's exclusive control that may be provided without bargaining.<sup>5</sup> Finally, we agree with the hearing officer that in evaluating whether the two campaign statements cited by the Employer constitute objectionable promises of benefits, it is appropriate to consider them in the context of all the other relevant facts of the case, rather than in isolation.<sup>6</sup> Mindful of these principles, we find the Employer has failed to meet its burden of proving the Union made objectionable promises of free medical benefits.

In all the evidence of campaign propaganda, only the statement in the first leaflet cited by the Employer suggested employees would receive free medical benefits simply by electing the Union. However, a subsequent paragraph in the same leaflet indicated free medical benefits would be the subject of negotiations between the Employer and the Union. The statement in the second leaflet cited by the Employer suggested the Union had some direct control over medical coverage, to the extent that its manager could waive the waiting period for coverage, but it also suggested a link between a "signed contract" and the receipt of "free medical benefits for you and your family."

If the statements cited by the Employer created any ambiguity about whether the Union had direct control of a free medical benefit plan and promised to confer the benefit on employees automatically in the event it won the election, all other campaign literature described above, including the Employer's leaflet, resolved the ambiguity by clearly indicating employees could only gain free medical benefits through the Union's negotiations with the Employer for a collective-bargaining agreement. Indeed, the Union's April 10 leaflet, after mentioning the collective-bargaining process, expressly stated that the Union needed the employees' votes "to

<sup>&</sup>lt;sup>3</sup> Safeway, Inc., 338 NLRB 525 (2002) (internal quotes omitted), citing Kux Mfg. Co. v. NLRB, 890 F.2d 804, 808 (6th Cir. 1989), quoting Harlan #4 Coal Co. v. NLRB, 490 F.2d 117, 120 (6th Cir. 1974), cert. denied 416 U.S. 986 (1974).

<sup>&</sup>lt;sup>4</sup> Burns Security Services, 256 NLRB at 962, citing Smith Co., 192 NLRB 1098, 1101 (1971).

<sup>&</sup>lt;sup>5</sup> E.g., *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973) (waiver of initiation fees in exchange for preelection showing of support).

<sup>&</sup>lt;sup>6</sup> See, e.g., *Smith Co. of California, Inc.*, 215 NLRB 530 (1974) (Board found ambiguous union statements about initiation fee waiver not objectionable in light of other statements clearly indicating benefit of waiver not limited to employees who joined before the election).

fulfill our commitment to negotiate higher wages, medical, and other benefits." Similarly, the last leaflet stated: "A 'YES' vote means that the Company will be required by law to negotiate in good faith with the Union for . . . Free medical insurance."

In addition, the testimony of Business Agent Miranti, as corroborated by employees Hernandez and Tolbert, shows that Miranti explained to employees in several meetings prior to the election that the free medical benefits discussed by the Union would have to be obtained through contract negotiations with the Employer. In this regard, we agree with the hearing officer that Human Resources Manager Michael's testimony, although credited, is not dispositive regarding the Union's statements about medical benefits. Even though Michael credibly testified that Hernandez. Tolbert, and Philip told her the Union was offering "free medical" and that none of them said these benefits had to be negotiated, Michael was not present at the union meetings, and her testimony—unlike the testimony of Miranti, Hernandez, and Tolbert-does not establish what the union representatives actually told employees at those meetings. To the extent Michael's testimony indicates the three employees misunderstood the Union's message, the record provides no reasonable basis for attributing this misunderstanding to the Union.

In sum, we find from the totality of circumstances that the Union fully informed employees that free medical benefits were dependent on the parties' collectivebargaining negotiations.<sup>7</sup> We therefore find that the Employer has failed to show the Union made an objectionable promise of a direct medical benefit if employees voted for it.

#### CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Amalgamated, Industrial and Toy & Novelty Workers of America, Local 223, AFL—CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time warehouse employees employed by the Employer at its 400 Veterans Boulevard, Carlstadt, New Jersey facility, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

<sup>&</sup>lt;sup>7</sup> As we find that the Union made clear that free medical benefits were dependent on collective-bargaining negotiations, the cases relied on by the Employer are inapposite, because they concerned clear promises to give employees directly money or other items of value within the union's control. See *Tio Pepe, Inc.*, 263 NLRB 1165 (1982) (promise—not by union but by restaurant captains—to increase waiters' and busboys' share of tips if union won election); *Crestwood Manor*, 234 NLRB 1097 (1978) (union promise to conduct \$100 raffle if it won election); *Loubella Extendables, Inc.*, 206 NLRB 183 (1973) (union's promise to forgive employees' previously accrued obligations to pay dues or initiation fees if union won election).